



**Proposed addition to Article 2 of the Draft articles on the Prevention and Punishment of Crimes Against Humanity:**  
**“widespread, long-lasting, or severe destruction of the natural environment as the means of destruction, damage, or injury to any civilian population”**

1. The present proposal aims to facilitate States’ consideration of including environmental destruction among the enumerated crimes against humanity, following the desire expressed by a number of States to incorporate environmental harm or exploitation in some fashion.
2. In this respect, the Republic of Sierra Leone has “reiterate[d] the important point of the necessity to extend the list of prohibited acts to include, for instance, economic, land and mineral exploitation, and environmental degradation”, noting that while these would reflect a “progressive development”, this “may be necessary in contemporary times”.<sup>1</sup> The State of Eritrea has likewise “stresse[d] the legal consideration of including other serious crimes, *inter alia*, [...] severe environmental damage and serious harm to human beings and other species, the illegal exploitation of natural resources, or the illegal dispossession of land”.<sup>2</sup> Other States, including Burkina Faso and the Republic of Cameroon, have also expressed an interest in adding environmental crimes to the enumerated acts.<sup>3</sup>
3. This proposal focuses on the narrower crime of environmental destruction, as it is already proscribed through a well-regarded international convention that has, additionally, been incorporated by the General Assembly into legal principles disseminated only two years ago.
4. Proscribing environmental destruction is a core focus of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (“ENMOD Convention”), which the General Assembly approved on 10 December 1976 and which entered into force on 5 October 1978. Some years later, the General Assembly “*appeal[ed]* to all States that have not yet done so to consider becoming parties” to the ENMOD Convention.<sup>4</sup> It now boasts 78 Parties from an impressive cross-section of States.<sup>5</sup>

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<sup>1</sup> Statement by H.E. Mr. Amara S. Sowa, Charge d’affaires a.i., Ambassador/Deputy Permanent Representative, at the General Assembly Sixth Committee, 12 October 2023, para. 8.

<sup>2</sup> Statement Delivered by the Delegation of Eritrea at the General Assembly Sixth Committee, 12 October 2023, p. 2.

<sup>3</sup> *Déclaration du Burkina Faso prononcée par Son Excellence Monsieur Oumarou GANOU, Ambassadeur, Représentant Permanent, devant la Sixième Commission de l’Assemblée Générale*, 12 October 2023, p. 2 ; *Déclaration du Cameroun faite par NYANID Zacharie Serge Raoul, Ph. D, Ministre Plénipotentiaire, devant la Sixième Commission de l’Assemblée Générale*, 12 October 2023, p. 2. Both sets of remarks referred to the pillage of natural resources.

<sup>4</sup> General Assembly resolution 47/37 (25 November 1992, adopted without a vote), para. 2.

<sup>5</sup> Afghanistan, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Benin, Brazil, Bulgaria, Cabo Verde, Cameroon, Canada, Chile, China, Costa Rica, Cuba, Cyprus, Czech Republic, Democratic People’s Republic of Korea, Denmark, Dominica, Egypt, Estonia, Finland, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Ireland, Italy, Japan, Kazakhstan, Kuwait, Kyrgyzstan, Lao People’s Democratic Republic, Lithuania, Malawi, Mauritius, Mongolia, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Panama, Papua New Guinea, Poland, Republic of Korea, Romania, Russian Federation, Sao Tome and Principe, Slovakia, Slovenia, Solomon Islands, Spain, Sri Lanka, St. Lucia, St. Vincent and the Grenadines, State of Palestine, Sweden, Switzerland, Tajikistan, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Uzbekistan, Viet Nam, and Yemen.

5. Article 1(1) of the ENMOD Convention provides that each State Party “undertakes not to engage in military or any other hostile use of environmental modification techniques **having widespread, long-lasting or severe effects as the means of destruction, damage or injury** to any other State Party”.<sup>6</sup>
6. This provision of the ENMOD Convention is also incorporated in the International Law Commission’s Principles on protection of the environment in relation to armed conflicts, which the General Assembly recently annexed to resolution 77/104 while encouraging their widest possible dissemination.<sup>7</sup> The International Committee of the Red Cross, in turn, has also considered that “irrespective of whether the provisions of the ENMOD Convention are themselves customary, there is sufficiently widespread, representative and uniform practice to conclude that the destruction of the natural environment may not be used as a weapon”.<sup>8</sup>
7. While most legal analysis of the ENMOD Convention is centered on international humanitarian law applicable in an armed conflict, this does not signify that destroying the natural environment can only potentially qualify as a war crime instead of also, or separately, constituting a crime against humanity. It is well-established that many war crimes have corollaries as crimes against humanity should the necessary contextual element and nexus be established, such as wilful killing/murder, torture, rape, unlawful deportation or transfer, and unlawful confinement. Environmental destruction could be added to this list.
8. Although it has not yet been charged as a crime against humanity, there has been universal recognition that intentional acts aimed at causing environmental destruction can pose a dire threat to civilians. For example, following Iraq’s torching and destruction of hundreds of oils wells in Kuwait in the early 1990s, the General Assembly in unanimous resolutions deemed this a “catastrophe” and twice expressed that it was “*profoundly concerned* at the degradation of the environment as a consequence of the damage, especially the threat posed to the health and well-being of the people of Kuwait and the people of the region”.<sup>9</sup>
9. It is tragically foreseeable that environmental destruction could be utilized as part of a widespread or systematic attack directed against a civilian population, with potentially devastating consequences. This concern is exacerbated by a number of contemporary factors, including the exponential growth rate of the global population, which relies on limited natural resources that are themselves becoming less accessible due to overuse, climate change, and

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<sup>6</sup> Emphasis added. Article 2 of the ENMOD Convention elaborates that “the term ‘environmental modification techniques’ refers to any technique for changing – through the deliberate manipulation of natural processes – the dynamics, composition or structure of the earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space”. The Understandings underlying the ENMOD Convention indicate that “widespread” is to be interpreted as “encompassing an area on the scale of several hundred square kilometres”, “long-lasting” as “lasting for a period of months, or approximately a season”, and “severe” as “involving serious or significant disruption or harm to human life, natural and economic resources or other assets”. Report of the Conference of the Committee on Disarmament, Volume 1, 1976, United Nations document A/31/27[Vol.I](Supp), p. 91.

<sup>7</sup> General Assembly resolution 77/104 (7 December 2022) (adopted without a vote), para. 4, Annex, Principle 17. Underscoring the importance of protecting the environment during armed conflict, Principle 13 also reflects the separate but similar provisions from Articles 35(3) and 55(1) of Additional Protocol I to the Geneva Conventions.

<sup>8</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *International Committee of the Red Cross, Customary International Humanitarian Law, Volume I: Rules* (Cambridge University Press, 2005), p. 156.

<sup>9</sup> General Assembly resolution 46/216 (20 December 1991) (135 States in favour and 0 against, with 1 abstention) (using “deterioration” in place of “degradation”); General Assembly resolution 47/151 (18 December 1992) (159 States in favour and 0 against, with 2 abstentions).

weather extremes. Given the fundamental importance of natural resources to survival, it may be inevitable that at least some attacks directed against a civilian population are likely to include acts having widespread, long-lasting, or severe destruction of the natural environment as the means of destruction, damage, or injury to the civilian population.

10. States could consider accounting for this impending harm, should they wish, by applying Article 1(1) of the ENMOD Convention and complementing the draft Articles on the Prevention and Punishment on Crimes Against Humanity in the following manner:

## **Article 2**

### **Definition of crimes against humanity**

1. For the purposes of the present draft articles, “crimes against humanity” means any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

[...]

**(k) widespread, long-lasting, or severe destruction of the natural environment as the means of destruction, damage, or injury to any civilian population;**

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